



"I hope this bullhorn will make this meeting a little less boring."

UTAH OPEN & PUBLIC MEETINGS ACT (and other stuff!)

UTAH CODE ANN. §§52-4-101 et seq.

1

DECLARATION OF PUBLIC POLICY

- The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the peoples business.
- It is the intent of the Legislature that the state, its agencies and its political subdivisions : (a) take their actions openly; and (b) conduct their deliberations openly.

2

WHO IS SUBJECT TO OPMA?

Any administrative, advisory, executive, or legislative body that;

- Was created by the Utah Constitution, statute, rule, ordinance or resolution;
- Consists of two or more persons;
- Expends, disburses, or is supported in whole or part by tax revenue; and
- Has authority to make decisions regarding the public's business.



3

WHAT IS A “MEETING”?



- “Meeting” means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power, about, or acting upon a matter over which the public has jurisdiction or advisory power.

4

“MEETING” DOES NOT MEAN?

- A chance meeting.
- A social meeting.
- Meeting of a legislative body with both legislative and executive responsibilities.
 - No public funds are appropriated.
 - Meeting solely for discussion or to implement administrative/operational matters.



CAUTION: Do not use chance or social meetings to circumvent the OPMA!

5

ELECTRONIC MEETINGS

- Can meet by phone, computer or other electronic means.
 - Notice requirements still apply.
 - Public must have a means to attend or participate.
 - Must have adopted an existing rule, resolution, or ordinance.



6

CLOSED MEETINGS



A “MEETING” CAN BE CLOSED TO:

- Discuss an individual’s character, professional competence, or physical or mental health.
- Discuss collective bargaining.
- Discuss pending or reasonably imminent litigation.
- Discuss the purchase, exchange, lease, or sale of real property.
 - Public notice of the terms and public approval of sale required.
- Discuss deployment of security personnel, devices, or systems.
- For investigative proceedings regarding allegations of criminal misconduct.
- Discuss commercial information, if a County legislative body.

7

PROCESS TO CLOSE MEETINGS



- A Quorum must be present.
- Two-thirds of the body must vote to close the meeting.
- The body must first hold a public meeting with proper notice before entering into the closed meeting.
- The body must publicly disclose:
 - The vote by name of each member for or against entering into the closed meeting.
 - The reasons for holding the closed meeting.
 - Location of the closed meeting.

8

CLOSED MEETING NO-NOS

- You may not:
 - Approve any ordinance, resolution, rule, regulation, contract or appointment.
 - Interview a person to fill an elected position.
 - Take final action.
 - Final votes must be open and on the record.



9

NOTICE REQUIREMENTS

- Must be posted as a written notice at the place where the meeting will be held;
- Must be given to at least one local general circulation newspaper or local media correspondent;
- After October, 2008, by posting notice to the “Utah Public Notice Website” (not required if you are a municipality, local district, or a special service district with budget less than \$1,000.000 but only until December 31, 2012); and
- At least 24 hours prior to meeting, post:
 - Agenda including all action items stated with reasonable specificity;
 - Date;
 - Time; and
 - Place.

10

EMERGENCY MEETINGS

- The best notice practicable is given.
- Must make an attempt to notify all of the members of the public body and a majority of them must approve the emergency meeting.
- The minutes include a statement of the unforeseen circumstances that made the meeting necessary.



11

RECORDINGS



- A recording must be kept of all open meetings.
 - A recording of an open meeting must be available to the public for listening within three business days after the meeting.
 - A recording is not required for site visits or traveling tours or for certain small local districts.
- A recording must be kept of all closed meetings, except:
 - A meeting closed to discuss the character, professional competence, or physical or mental health of an individual does not need to be recorded, but the presiding person must sign a sworn statement.
 - A meeting closed to discuss deployment of security personnel, devices, or systems does not need to be recorded, but the presiding person must sign a sworn statement.

12

MEETING MINUTES



- Written minutes must be kept of all open meetings.
 - Written minutes shall be available to the public within a reasonable time.
 - A public body must establish and implement procedures for approval of written minutes.
- Detailed written minutes may be kept of all closed meetings, except:
 - A meeting closed to discuss the character, professional competence, or physical or mental health of an individual does not need to be recorded or written minutes kept, but the presiding person must sign a sworn statement.
 - A meeting closed to discuss deployment of security personnel, devices, or systems does not need to be recorded or written minutes kept, but the presiding person must sign a sworn statement.

13

REQUIREMENTS FOR WRITTEN MINUTES

- All minutes must include:
 - Date/time;
 - Place of meeting; and
 - Names of all members present or absent.
- Minutes of open meetings must include:
 - All matters proposed, discussed or decided;
 - All names and substance of information from individuals giving testimony;
 - Individual votes on each matter; and
 - Any additional information requested by a member.
- Minutes of closed meetings must include:
 - The names of others present at the closed meeting, unless it infringes on the purpose of the closed meeting.
- Minutes Awaiting Approval:
 - Must be clearly identified as “awaiting formal approval” or “unapproved” or with some other appropriate notice that the written minutes are subject to change until formally approved.

14

WRITTEN PROCEDURES



- See attached.

15

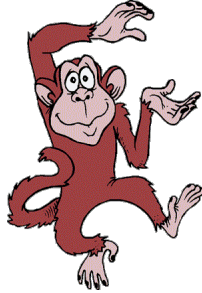
VIOLATIONS OF OPMA

- “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.”
- A court can void any action in violation of the law.
- Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting.
- May have to pay court costs and attorneys fees.



16

LEGISLATIVE UPDATE



- **H.B. 189** – allows a closed meeting to be held to discuss the purchase, exchange, lease, or sale of a water right or water shares.
- **H.B. 315** – modifies the statutory requirements to publish or post notice to the Utah Public Notice Website by providing a temporary exemption (until December 31, 2012) for a municipality, local district, or a special service district, with an annual budget of less than \$1,000,000.
- **S.B. 136** – authorizes the Independent Legislative Ethics Commission to convene a closed meeting without first convening an open meeting, if the closed meeting relates to the receipt or review of an ethics complaint, and the Commission provides advance public notice of the closed meeting. This bill also provides that an ethics committee of the Legislature may close a meeting by a majority vote for the purpose of conducting deliberations to reach a decision on an ethics complaint, or to seek legal advice on legal, evidentiary, or procedural matters.

17

TROUBLESHOOTING

- Deliberations
- Work Sessions
- Site Visits
- Conflicts of Interest
- *Ex Parte* Contacts



18

DELIBERATIONS



- Normally, deliberations are conducted in the open.
- Exception: Quasi-Judicial vs. Administrative or Legislative.
 - But, information gathering still conducted in the open.
 - *Common Cause v. Utah Public Serv. Comm'n*, 598 P.2d 1312 (Utah 1979).
 - *Kearns-Tribune Corp. v. Salt Lake Co. Comm'n*, 28 P.3d 686 (Utah 2001).

19

WORK SESSIONS



- Covered by the OPMA.
- No decision can be made in work session, but must be made in an open session.
- Do not use to circumvent the information gathering and deliberation process.

20

SITE VISITS



- Covered by the OPMA.
- No recording necessary, but should keep detailed minutes.
- Do not use to circumvent the information gathering and deliberation process.

21

CONFLICTS OF INTEREST



- County Officers' and Employees' Disclosure Act (U.C.A. Sections 17-16a-1 *et seq.*).
- Municipal Officers' and Employees' Ethics Act (U.C.A. Sections 10-3-1301 *et seq.*).
- Utah Public Officers' and Employees' Ethics Act (U.C.A. Sections 67-16-1 *et seq.*).

22

DO THOSE ACTS APPLY TO ME?



- Yes, if you are an employee, elected or appointed officer:
 - “Elected officer” means any person elected or appointed to any office in the county.
 - “Appointed officer” means any person appointed to any statutory office or position or any other person appointed to any position of employment with a county, except special employees. Appointed officers include, but are not limited to persons serving on special, regular or full-time committees, agencies, or boards whether or not such persons are compensated for their services. The use of the word "officer" in this part is not intended to make appointed persons or employees "officers" of the county.

23

PROHIBITIONS

- It is an offense for an elected or appointed officer to (similar provisions apply to employees):
 - Disclose confidential information acquired by reason of the officer’s official position or to use that information to secure special privileges or exemptions for himself or others;
 - Use or attempt to use the officer's official position to secure special privileges for the officer or for others; or
 - Knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or loan for the officer or for another, if the gift or loan tends to influence the officer in the discharge of the officer's official duties.
- Exceptions:
 - An occasional nonpecuniary gift having a value of less than \$50;
 - An award publicly presented;
 - Any bona fide loan made in the ordinary course of business; or
 - Political campaign contributions actually used in a political campaign.

24

INTERESTS CREATING A CONFLICT



- Receives or agrees to receive compensation for assistance in a transaction involving the entity;
- Have an interest in a business regulated by the entity;
- Have an interest in a business doing business with the entity; or
- Have an investment creating a conflict of interest with you duties.

25

I HAVE AN INTEREST, NOW WHAT?

- Consult with the legal advisor.
- File a sworn statement with entity's governing body (for ongoing conflicts & for assistance in a transaction involving the entity).
 - Disclose the position held and the precise nature and value of the interest held.
 - File upon first becoming appointed or elected and each January thereafter.
- Publicly disclose to the members of the body on which he is a member prior to discussion of the matter in an open meeting.
- Disclosure needs to be entered into the minutes of the meeting.

26

RECUSAL

Lets Get Down to the Nitty Gritty.

- Not required by statute, but should do so anyway.
- Strongly suggest that you vacate your seat for the conflicted agenda item.
- Refrain from discussing, voting, hand signals, facial gestures, etc.



27

VIOLATIONS



- Any Person who knowingly and intentionally violates, then Class A misdemeanor (more or less) **and** shall be dismissed from employment or removed from office.
- If interest relates to business regulated by entity, then entity can rescind or void any contract without returning the consideration.

28

Ex Parte Contacts

- What are they?
 - Contact by only one side of a matter outside a regularly scheduled meeting on matters to be discussed at a meeting.
 - Can be on a site visit, face-to-face, electronic communication, or any other written or oral form of communication.
- So, why does it matter?
 - Public business conducted in open meetings.
 - Due process concerns.
 - Fairness to all parties and to the public.

29

WHAT TO DO?



- If an *ex parte* contact occurs:
 - Consult with the legal advisor.
 - Publicly disclose the substance of the contact to the members of the body on which he is a member prior to discussion of the matter in an open meeting.
 - Provide a copy of any written communication for the record of the meeting.

30

QUESTIONS?



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